

AMENDED IN ASSEMBLY JUNE 20, 2012

AMENDED IN SENATE APRIL 16, 2012

**SENATE BILL**

**No. 1531**

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**Introduced by Senator Wolk**

February 24, 2012

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An act to ~~amend Section 23958.4 of~~ *add Section 25503.32 to the* Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1531, as amended, Wolk. Alcoholic beverages: ~~licensees.~~ *tied-house restrictions: opera houses.*

The Alcoholic Beverage Control Act ~~specifies the rules and procedures for the issuance and transfer of alcoholic beverage licenses by the Department of Alcoholic Beverage Control. The act requires the department to deny an application for a license if issuance or transfer of the license would result in or add to an undue concentration where, among other things, the ratio of on-sale or off-sale retail licenses to population in a specified area exceeds the ratio of on-sale or off-sale retail licenses to population within that area's county. Existing law specifies how the number retail licenses within a county is determined for purposes of this prohibition~~ *contains limitations on sales commonly known as "tied-house" restrictions, which generally prohibit a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, bottler, importer, or wholesaler from furnishing, giving, or lending any money or other thing of value to any person engaged in operating, owning, or maintaining any on-sale licensed premises. Existing law authorizes specific exceptions to this prohibition, including exceptions for donations to nonprofit corporations.*

~~This bill would revise the manner in which the number of retail licenses in a county is established~~ *additionally authorize donations of wine by specified winegrowers to an opera house under specified conditions, as provided. This bill would make findings regarding the need for special legislation.*

*The Alcoholic Beverage Control Act provides that a violation of any of its provisions for which another penalty or punishment is not specifically provided is a misdemeanor. This bill would expand existing crimes by imposing additional requirements on a licensee under the act, thus, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 25503.32 is added to the Business and*
- 2     *Professions Code, to read:*
- 3     *25503.32. (a) Notwithstanding any other provision of this*
- 4     *division, a holder of a winegrower's license whose licensed*
- 5     *premises of production are located within the County of Napa may*
- 6     *donate wine to an opera house, if all the following conditions are*
- 7     *met:*
- 8     *(1) The opera house is a nonprofit charitable corporation or*
- 9     *association exempt from payment of income taxes under the*
- 10    *provisions of the Internal Revenue Code of the United States and*
- 11    *Chapter 4 (commencing with Section 23701) of Part 11 of Division*
- 12    *2 of the Revenue and Taxation Code.*
- 13    *(2) The opera house has been incorporated in the City and*
- 14    *County of Napa and produces not less than 150 events open to the*
- 15    *general public per year.*
- 16    *(3) The opera house holds a retail on-sale license.*
- 17    *(4) The donation shall not be conditioned directly or indirectly,*
- 18    *in any way, on the purchase, sale, or distribution of any alcoholic*

1 beverage manufactured or distributed by the holder of a  
2 winegrower's license by the opera house.

3 (b) The on-sale retail licensee may sell the donated wine and  
4 shall sell or serve other brands of wine in addition to brands  
5 produced or marketed by the donating winegrower.

6 (c) The opera house may acknowledge and thank a donating  
7 winegrower in the opera house's event programs, on the opera  
8 house's Internet Web site, and on stage during an event.

9 (d) The Legislature finds that it is necessary and proper to  
10 require a separation between manufacturing interests, wholesale  
11 interests, and retail interests in the production and distribution of  
12 alcoholic beverages in order to prevent suppliers from dominating  
13 local markets through vertical integration and to prevent excessive  
14 sales of alcoholic beverages produced by overly aggressive  
15 marketing techniques. The Legislature further finds that the  
16 exceptions established by this section to the general prohibition  
17 against tied interests must be limited to their express terms so as  
18 not to undermine the general prohibition, and intends that this  
19 section be construed accordingly.

20 SEC. 2. The Legislature finds and declares that, because of  
21 the unique circumstances, and the cultural importance of the Napa  
22 Valley Opera House, a statute of general applicability cannot be  
23 enacted within the meaning of subdivision (b) of Section 16 of  
24 Article IV of the California Constitution, and, therefore, this special  
25 statute is necessary.

26 SEC. 3. No reimbursement is required by this act pursuant to  
27 Section 6 of Article XIII B of the California Constitution because  
28 the only costs that may be incurred by a local agency or school  
29 district will be incurred because this act creates a new crime or  
30 infraction, eliminates a crime or infraction, or changes the penalty  
31 for a crime or infraction, within the meaning of Section 17556 of  
32 the Government Code, or changes the definition of a crime within  
33 the meaning of Section 6 of Article XIII B of the California  
34 Constitution.

35 SECTION 1. ~~Section 23958.4 of the Business and Professions~~  
36 ~~Code is amended to read:~~

37 ~~23958.4. (a) For purposes of Section 23958, "undue~~  
38 ~~concentration" means the case in which the applicant premises for~~  
39 ~~an original or premises-to-premises transfer of any retail license~~  
40 ~~are located in an area where any of the following conditions exist:~~

1     ~~(1) The applicant premises are located in a crime reporting~~  
2     ~~district that has a 20 percent greater number of reported crimes;~~  
3     ~~as defined in subdivision (c), than the average number of reported~~  
4     ~~crimes as determined from all crime reporting districts within the~~  
5     ~~jurisdiction of the local law enforcement agency.~~

6     ~~(2) As to on-sale retail license applications, the ratio of on-sale~~  
7     ~~retail licenses to population in the census tract or census division~~  
8     ~~in which the applicant premises are located exceeds the ratio of~~  
9     ~~on-sale retail licenses to population in the county in which the~~  
10    ~~applicant premises are located.~~

11    ~~(3) As to off-sale retail license applications, the ratio of off-sale~~  
12    ~~retail licenses to population in the census tract or census division~~  
13    ~~in which the applicant premises are located exceeds the ratio of~~  
14    ~~off-sale retail licenses to population in the county in which the~~  
15    ~~applicant premises are located.~~

16    ~~(b) Notwithstanding Section 23958, the department may issue~~  
17    ~~a license as follows:~~

18    ~~(1) With respect to a nonretail license, a retail on-sale bona fide~~  
19    ~~eating place license, a retail license issued for a hotel, motel, or~~  
20    ~~other lodging establishment, as defined in subdivision (b) of~~  
21    ~~Section 25503.16, a retail license issued in conjunction with a beer~~  
22    ~~manufacturer's license, or a winegrower's license, if the applicant~~  
23    ~~shows that public convenience or necessity would be served by~~  
24    ~~the issuance.~~

25    ~~(2) With respect to any other license, if the local governing body~~  
26    ~~of the area in which the applicant premises are located, or its~~  
27    ~~designated subordinate officer or body, determines within 90 days~~  
28    ~~of notification of a completed application that public convenience~~  
29    ~~or necessity would be served by the issuance. The 90-day period~~  
30    ~~shall commence upon receipt by the local governing body of (A)~~  
31    ~~notification by the department of an application for licensure, or~~  
32    ~~(B) a completed application according to local requirements, if~~  
33    ~~any, whichever is later.~~

34    ~~If the local governing body, or its designated subordinate officer~~  
35    ~~or body, does not make a determination within the 90-day period,~~  
36    ~~then the department may issue a license if the applicant shows the~~  
37    ~~department that public convenience or necessity would be served~~  
38    ~~by the issuance. In making its determination, the department shall~~  
39    ~~not attribute any weight to the failure of the local governing body,~~  
40    ~~or its designated subordinate officer or body, to make a~~

1 ~~determination regarding public convenience or necessity within~~  
2 ~~the 90-day period.~~

3 (e) ~~For purposes of this section, the following definitions shall~~  
4 ~~apply:~~

5 (1) ~~“Reporting districts” means geographical areas within the~~  
6 ~~boundaries of a single governmental entity (city or the~~  
7 ~~unincorporated area of a county) that are identified by the local~~  
8 ~~law enforcement agency in the compilation and maintenance of~~  
9 ~~statistical information on reported crimes and arrests.~~

10 (2) ~~“Reported crimes” means the most recent yearly compilation~~  
11 ~~by the local law enforcement agency of reported offenses of~~  
12 ~~criminal homicide, forcible rape, robbery, aggravated assault,~~  
13 ~~burglary, larceny theft, and motor vehicle theft, combined with all~~  
14 ~~arrests for other crimes, both felonies and misdemeanors, except~~  
15 ~~traffic citations.~~

16 (3) ~~“Population within the census tract or census division” means~~  
17 ~~the population as determined by the most recent United States~~  
18 ~~decennial or special census. The population determination shall~~  
19 ~~not operate to prevent an applicant from establishing that an~~  
20 ~~increase of resident population has occurred within the census tract~~  
21 ~~or census division.~~

22 (4) ~~“Population in the county” shall be determined by the annual~~  
23 ~~population estimate for California counties published by the~~  
24 ~~Population Research Unit of the Department of Finance.~~

25 (5) ~~“Retail licenses” shall include the following:~~

26 (A) ~~Off-sale retail licenses: Type 20 (off-sale beer and wine)~~  
27 ~~and Type 21 (off-sale general).~~

28 (B) ~~On-sale retail licenses: All retail on-sale licenses, except~~  
29 ~~Type 43 (on-sale beer and wine for train), Type 44 (on-sale beer~~  
30 ~~and wine for fishing party boat), Type 45 (on-sale beer and wine~~  
31 ~~for boat), Type 46 (on-sale beer and wine for airplane), Type 53~~  
32 ~~(on-sale general for train and sleeping car), Type 54 (on-sale~~  
33 ~~general for boat), Type 55 (on-sale general for airplane), Type 56~~  
34 ~~(on-sale general for vessels of more than 1,000 tons burden), and~~  
35 ~~Type 62 (on-sale general bona fide public eating place intermittent~~  
36 ~~dockside license for vessels of more than 15,000 tons~~  
37 ~~displacement).~~

38 (6) ~~A “premises to premises transfer” refers to each license~~  
39 ~~being separate and distinct, and transferable upon approval of the~~  
40 ~~department.~~

1     ~~(d) For purposes of this section, the number of retail licenses~~  
2     ~~in the county shall be established by the department on an annual~~  
3     ~~basis.~~

4     ~~(e) The enactment of this section shall not affect any existing~~  
5     ~~rights of any holder of a retail license issued prior to April 29,~~  
6     ~~1992, whose premises were destroyed or rendered unusable as a~~  
7     ~~result of the civil disturbances occurring in Los Angeles from April~~  
8     ~~29 to May 2, 1992, to reopen and operate those licensed premises.~~

9     ~~(f) This section shall not apply if the premises have been~~  
10    ~~licensed and operated with the same type license within 90 days~~  
11    ~~of the application.~~